

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

JAMES PRESTRIDGE,

Plaintiff,

vs.

RENEE BAKER, *et al.*,

Defendants.

3:12-cv-00638-LRH-VPC

**ORDER**

This action is a *pro se* civil rights complaint filed pursuant to 42 U.S.C. § 1983 by a state prisoner. By order filed May 9, 2013, this Court dismissed the complaint with prejudice for failure to state a claim, as amendment would have been futile. (ECF No. 5). Judgment was entered on May 9, 2013. (ECF No. 6). Plaintiff filed a notice of appeal on May 20, 2013, appealing this Court's order of May 9, 2013. (ECF No. 11). On May 31, 2013, plaintiff filed a motion for the transmittal of the entire record on appeal to the Ninth Circuit Court of Appeals. (ECF No. 16). Plaintiff's motion is denied as moot, because this Court has already transmitted the entire record on appeal to the Ninth Circuit Court of Appeals. (*See* ECF No. 12).

Further, this Court notes that plaintiff has filed the following motions after the entry of the dismissal order: plaintiff's motion for withdrawal of filings (ECF No. 7), motion for class certification (ECF No. 8), motion for leave to file an amended complaint (ECF No. 9), and motion for reconsideration (ECF No. 14). The filing of a valid notice of appeal divests the district court of jurisdiction to alter, amend, or modify the order or judgment challenged in the appeal. *See Pope v. Sav. Bank of Puget Sound*, 850 F.2d 1345, 1347 (9<sup>th</sup> Cir. 1988); *see also* Fed. R. Civ. P. 60(a). As

1 such, plaintiff's motions concerning the dismissal of the complaint cannot be ruled on by this Court  
2 while the appeal from the order of dismissal is pending in the Ninth Circuit Court of Appeals.  
3 Therefore, this Court's ruling on plaintiff's motions is deferred. Such motions will be addressed by  
4 this Court upon the conclusion of the appeal to the Ninth Circuit, not inconsistent with the Ninth  
5 Circuit Court of Appeals' decision on appeal.

6 **IT IS THEREFORE ORDERED** that plaintiff's motion for the transmittal of the entire  
7 record to the Ninth Circuit Court of Appeals (ECF No. 16) is **DENIED AS MOOT**.

8 **IT IS FURTHER ORDERED** that plaintiff's motions at ECF Nos. 7, 8, 9, and 14 are  
9 **DEFERRED** until the conclusion of the appeal to the Ninth Circuit, not inconsistent with the Court  
10 of Appeals' decision on appeal.

11 Dated this 24th day of June, 2013.



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14 LARRY R. HICKS  
UNITED STATES DISTRICT JUDGE  
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